



# PUBLIC NOTICE

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**FCC 03-263**  
**Released: October 27, 2003**

## **COMMISSION ESTABLISHES COMMENT CYCLE FOR NEW VERIZON PETITION REQUESTING FORBEARANCE FROM APPLICATION OF SECTION 271**

**CC Docket No. 01-338**

**Comments date: November 17, 2003**  
**Reply comments date: November 26, 2003**

On July 29, 2002, the Verizon telephone companies filed a petition<sup>1</sup> asking the Commission to forbear from applying items four, five, six and ten of the section 271 competitive checklist<sup>2</sup> once the corresponding elements no longer needed to be unbundled under section 251(d)(2) of the Telecommunications Act of 1996.<sup>3</sup> In its Petition, Verizon argued that once an element no longer meets the section 251(d)(2) standard for unbundling, forbearance with respect to the parallel checklist item is *required* by section 10.<sup>4</sup> Verizon maintained that evidence that supports a finding of no impairment for a particular network element necessarily satisfies the three-prong forbearance test.<sup>5</sup> Under section 10, the Commission's statutory deadline to act on

<sup>1</sup> Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c), CC Docket No. 01-338 (filed July 29, 2002) (Verizon Petition or Petition). The Commission placed Verizon's Petition on Public Notice on August 1, 2002. *Wireline Competition Bureau Seeks Comment on Verizon Petition for Forbearance*, Public Notice, DA 02-1884 (WCB rel. Aug. 1, 2002).

<sup>2</sup> These items require the Bell Operating Companies (BOCs) to provide competitive carriers with local loops, transport and switching, as well as nondiscriminatory access to signaling and call-related databases. See 47 U.S.C. § 271(c)(2)(B)(iv)-(vi) and (x).

<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56. The 1996 Act amended the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* We refer to these Acts collectively as the "Communications Act" or the "Act."

<sup>4</sup> Verizon Petition at 3.

<sup>5</sup> See generally Verizon Petition (incorporating its comments in the Triennial Review docket into its Petition).

the Verizon Petition is October 27, 2003.<sup>6</sup>

In the *Triennial Review Order*, released on August 21, 2003, the Commission rejected the argument that a finding of non-impairment under section 251 necessarily relieves a BOC of the obligation to provide access to the corresponding network element under section 271.<sup>7</sup> Subsequently, on October 24, 2003, Verizon filed an *ex parte* withdrawing its request for forbearance with respect to any “narrowband elements” that do not have to be unbundled under section 251.<sup>8</sup> Verizon now argues that, notwithstanding any independent access obligation in section 271, the Commission must forbear from compelling access to broadband functionalities pursuant to section 271 as a result of the Commission’s analysis in the *Triennial Review Order*.<sup>9</sup> Specifically, Verizon contends that the Commission’s finding of non-impairment for certain broadband facilities, together with its judgment that mandated sharing of broadband facilities is inconsistent with the goal of facilitating broadband deployment, warrants forbearance from all broadband access obligations.<sup>10</sup>

We find that Verizon’s October 24 *Ex Parte* Letter abandoned the core legal rationale underlying its Petition and substituted a wholly different argument for forbearance. We therefore deny Verizon’s initial Petition because the principal argument for the relief initially requested was rendered moot by the *Triennial Review Order* and because Verizon substituted a new theory of relief. In light of this substitution, we choose to treat Verizon’s October 24 *Ex Parte* Letter as a new forbearance petition. To this end, we establish a comment cycle for this new forbearance petition as set forth below.

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. See 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects

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<sup>6</sup> 47 U.S.C. § 160(c), *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. § 160(c)*, CC Docket No. 01-338, Order (July 28, 2003)

<sup>7</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 at paras. 653-55 (rel. Aug. 21, 2003) (*Triennial Review Order*)

<sup>8</sup> Letter from Susanne A. Guyer, Senior Vice President, Federal Regulatory Affairs, Verizon, to Michael Powell, Chairman, and Kathleen Abernathy, Kevin Martin, Michael Copps and Jonathan Adelstein, Commissioners, Federal Communications Commission, CC Docket No. 01-338 (filed Oct. 24, 2003) (Verizon October 24 *Ex Parte* Letter)

<sup>9</sup> Verizon October 24 *Ex Parte* Letter at 2

<sup>10</sup> *Id.*

discussed. More than a one or two sentence description of the views and arguments presented generally is required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

Pursuant to Section 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the petition for forbearance and request for waiver on or before **November 17, 2003** and reply comments on or before **November 26, 2003**. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, SW, Suite TW-A325, Washington, DC 20554. Two (2) courtesy copies must be delivered to Janice M. Myles, Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, 445 12<sup>th</sup> Street, SW, Suite 5-C327, Washington, DC 20554 and one (1) copy must be sent to Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

**For further information regarding this proceeding contact Janice M. Myles, [janice.myles@fcc.gov](mailto:janice.myles@fcc.gov), Competition Policy Division, Wireline Competition Bureau, (202) 418-1580.**

Action by the Commission on October 27, 2003: By Chairman Powell; Commissioners Abernathy, Copps, Martin and Adelstein.

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